

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-075**

November 1, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Fritz Mulhauser

RE: FOIA Appeal 2021-075

Dear Mr. Mulhauser:

This letter is in response to the administrative appeals that you have submitted to the Mayor pursuant to the District of Columbia Freedom of Information Act ("FOIA"), D.C. Code §§ 2-531, *et seq.* In your appeals, you have challenged the response of the Metropolitan Police Department ("MPD") to your January 13, 2021 FOIA request, identified as 2021-BWC-00112, which sought the following:

[A]ll video from body worn cameras of MPD members deployed near and within the US Capitol in the afternoon and evening of January 6, 2021.

On January 14, 2021, MPD denied your request because a release of such footage would constitute as a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Code § 2-534(a)(2) and (a)(3)(C). Additionally, MPD asserted the body camera footage is part of an ongoing criminal investigation, the release of which could interfere with the direction and pace of the investigation, and would therefore be exempt from disclosure pursuant to D.C Code §2-534(a)(3)(A)(i).

In your January 25, 2021 appeal, you have asserted there is no identifiable privacy interest, segregable portions of video should be provided and the law enforcement exemption does not apply.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Code § 2-531. In aid of that policy, FOIA creates the right "to inspect...and...copy any public record of a public body..." D.C. Code § 2-532(a).

Under D.C. Code § 2-534(a)(3)(A)(i), records compiled for law enforcement purposes that pertain to investigations are exempt from disclosure to the extent the production of the records would interfere with an enforcement proceeding. *See Rural Housing Alliance v. United States*

Dep't of Agriculture, 498 F.2d 73, 81 (D.C. Cir. 1974)(records compiled for law enforcement purposes that pertain to an investigation are exempt from disclosure if the focus of the investigation is on acts that could, if proven, result in civil or criminal sanctions). To satisfy D.C. Code § 2-534(a)(3)(A)(i), the records: 1) must have been compiled for law enforcement purposes; and 2) disclosure of those records would “interfere with enforcement proceedings.” *Bevis v. Department of State*, 801 F.2d 1386, 1388 (D.C.Cir.1986)

The term “compiled for law enforcement purposes” does not limit the exemption to records that were “originally compiled” or created for that reason. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 154, 110 S.Ct. 471, 107 L.Ed.2d 462 (1989). An agency can also establish that such records were later gathered or used for law enforcement purposes at some time before the agency invokes the exemption, even if the information was “generated on an earlier occasion and for a different purpose.” *John Doe*, 493 U.S. at 154, 110 S.Ct. 471.

Interference with enforcement proceedings is “the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding.” *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232, 98 S.Ct. 2311, 57 L.Ed.2d 159 (1978). “[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory records exemption] applies.” *Juarez v. Department of Justice*, 518 F.3d 54, 59 (D.C.Cir.2008). While “blanket” or “generic” determinations are generally disfavored, assertions that the disclosure of a particular kind of investigatory record would generally interfere with an enforcement proceeding, within the meaning of the FOIA exemption, is not precluded. *Robbins Tire & Rubber Co.*, supra, 437 U.S. at 236.

Based on MPD’s representation that the requested media is part of an ongoing criminal investigation and the publicly available information detailing ongoing proceedings, we hold that MPD may withhold the identified information. As such, any discussion as to whether the subject information may be withheld under D.C. Code §2-534(a)(2) and (a)(3)(c) is moot at this time.

This constitutes the final decision of this Office. You may challenge any subsequent response to your request by separate appeal to this Office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with D.C. Code § 2-537.

Sincerely,

The Mayor’s Office of Legal Counsel

cc: Brandynn Reaves, MPD FOIA Officer (via email only)